

ESTTA Tracking number: **ESTTA741206**

Filing date: **04/20/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223574
Party	Plaintiff Mas Cantinas LLC
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Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/Susan B. Meyer/
Date	04/20/2016
Attachments	Motion to amend notice of opposition.pdf(2144020 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application)	
Serial No. 86518323)	
Filed: January 29, 2015)	
Published: June 23, 2016)	
By: Rosalie Gabriel, Individual, and Johnny D. Gabriel,)	
Individual)	
For the Trademark: MEZQUILA)	
<hr style="border: 1px solid black;"/>)	
MAS CANTINA LLC, a California Limited Liability)	Opposition No. 91223574
Company)	
)	
v.)	
)	
ROSALIE GABRIEL, an individual citizen of the United)	
States, and JOHNNY D. GABRIEL, and individual citizen of)	
the United States)	
)	
Applicant.)	
<hr style="border: 1px solid black;"/>)	

MOTION FOR LEAVE TO FILE AMENDED NOTICE OF OPPOSITION

I. INTRODUCTION

Opposer Mas Cantinas, LLC (“Opposer”) hereby moves this Board for leave to amend its Notice of Opposition for two reasons. First, ownership of the relevant marks has been sold since the initiation of the current proceedings and substitution of the assignee of those trademark rights is necessary. Second, ongoing discovery has revealed new facts which form the basis of new grounds for opposition, making amendment necessary to add those new claims.

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II. FACTUAL BACKGROUND

On January 29, 2015, Applicants Rosalie Gabriel and Johnny Gabriel (“Applicants”) filed U.S. Serial No. 86518323 for MEZQUILA (“Applicant’s Mark”). Opposer Mas Cantinas, LLC (“Opposer”) filed its own applications on April 24, 2015, U.S. Serial No. 86609901, for SANTO ESPIRITU MEZQUILA, and U.S. Serial No. 86609616, for SANTO MEZQUILA. In July 2015, Opposer filed for an extension of time to oppose Applicant’s Marks, which the Trademark Trial and Appeal Board (“TTAB”) granted. Then, on August 31, 2015, Opposer filed its Notice of Opposition and Applicant filed its Answer on October 7, 2015.

The parties began discovery and have since exchanged initial disclosures, engaged in document production, and participated in depositions. Discovery is currently ongoing. For example, Applicant responded to Opposer’s Requests for Production (“RFPs”) and Interrogatories (“ROGs”), and Applicant Johnny Gabriel was deposed on March 3, 2016.

At the time of filing the Notice of Opposition, Opposer’s Marks were owned by Opposer, “Mas Cantinas, LLC.” On January 13, 2016, however, Opposer assigned all rights and goodwill to Los Santos, LLC (“Los Santos”). Specifically, Opposer’s assignment “transfer[ed], convey[ed], and assign[ed] all of its rights, title and interest in and to all that portion of the business to which the intent-to-use trademark applications identified on attached Exhibit A to [Los Santos.]”¹ (See Declaration of Susan Meyer “Meyer Decl.,” filed herewith, at ¶3, Exhibit 1). The assignment also:

further transfers, conveys and assigns to [Los Santos], without any additional consideration, all ownership, right, and interest in and to that portion of [Opposer]’s business symbolized by the Marks, and all goodwill associated with the foregoing specifically including all the assets identified in Exhibit A which

¹ Exhibit A of the Assignment Agreement identifies the following marks: SANTO ESPIRITU, SANTO MEZQUILA, SANTO ESPIRITUO MEZQUILA, SANTO AGAVE, and SANTO MEZCAL.

assets specifically include the pending US Intent-to-Use trademark applications in accordance with 15 USC Sec. 1060. (*Id.*)

III. ARGUMENT

The Trademark Board Manual of Procedure (“TBMP”) explicitly allows for the amending of allegations and specifically states leave to amend should be “liberally granted” at any stage of the proceedings. TBMP § 507.02; *see also* TBMP § 504. The Federal Rules agree, instructing that a court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a). Indeed, “[c]onsistent with Fed. R. Civ. P. 15(a), the Board liberally grants leave to amend pleadings at any stage of the proceeding when justice requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party.” *Zanella, Ltd. v. Nordstrom, Inc.*, 90 U.S.P.Q.2d 1758 (T.T.A.B. May 13, 2009).

A. Substitute or Join Los Santos as Party

1. Legal Standard

The TBMP explains “[w]hen there has been an assignment of a mark that is the subject of, or relied upon in, an *inter partes* proceeding before the Board, the assignee may be joined or substituted, as may be appropriate, upon motion granted by the Board, or upon the Board’s own initiative.” TBMP § 512.01. Where the mark has been pleaded by a plaintiff, “the assignee ordinarily will be substituted for the originally named party [(i)] if the assignment occurred prior to the commencement of the proceeding, [(ii)] if the discovery and testimony periods have closed, [(iii)] if the assignor is no longer in existence, or [(iv)] if the defendant raises no objection to substitution.” *Id.*; *see Jewelers Guild, Inc. v. LJOW Holdings, LLC*, 82 U.S.P.Q.2d 1901, 1901 n.1 (T.T.A.B. 2007) (granting motion to substitute after discovery and testimony periods had closed). “Otherwise, the assignee will be joined, rather than substituted, to facilitate the taking of discovery and the introduction of evidence.” TBMP § 512.01.

The Federal Rules support either course of action. Rule 20 provides a party may join as a plaintiff if it asserts any right to relief “with respect to or arising out of the same transaction [or] occurrence[.]” Fed. R. Civ. P. 20(a)(1)(A). Rule 25, on the other hand, explains “[i]f an interest is transferred, the action may be continued by or against the original party, unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Fed. R. Civ. P. 25(c).

2. Substitution or Joinder

Opposer first moves the Board to substitute Los Santos in its stead for simplicity and efficiency. Although the assignment took place after the present proceedings began, and the discovery period is still open, Opposer believes Applicant should raise no objection. Indeed, Rule 25 instructs that substitution is appropriate where the asserted trademark rights have been duly assigned. *See Societe des Produits Nestle, S.A. v. Basso Fedele & Figli, Societa a Responsabilita Limitata*, 24 U.S.P.Q.2d 1079 (T.T.A.B. July 27, 1992) (granting motion for substitution, under FRCP 25(c) where motion was filed with photocopy of assignment of rights to pleaded trademark).

In the alternative, however, Opposer moves for Los Santos to be added as a party plaintiff. As the assignee of the pleaded marks—including SANTO MEZQUILA and SANTO ESPIRITU MEZQUILA—Los Santos is eligible to be joined in this Opposition. *See TBMP* § 512.01. Moreover, Los Santos seeks to assert the same rights against Applicant as Opposer. Accordingly, consistent with Rule 20’s directives, joinder of Los Santos is appropriate. *See Pro-Cuts v. Schilz-Price Entrp., Inc.*, 27 U.S.P.Q.2d 1224, 1225 (T.T.A.B. 1993) (motion, filed during testimony period, granted to join successor-in-interest).

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B. Add New Claims and Allegations

1. Legal Standard

Next, the TBMP's permissive views toward amendment specifically contemplate adding new claims. *See* TBMP § 507.02 (noting liberal standard applies “even when a plaintiff seeks to amend its complaint to plead a claim other than those stated in the original complaint”). In deciding on such a motion, “the Board must consider whether there is undue prejudice” to the Applicants and “whether the amendment is legally sufficient.” *Hurley Int’l LLC v. Paul & Joanne Volta*, 82 U.S.P.Q.2d 1339 (T.T.A.B. 2007). The TBMP also explicitly allows for amendments to “amplify allegations already included.” TBMP §507.02; *see also Avedis Zildjian Co. v. D.H. Baldwin Co.*, 180 U.S.P.Q. 539 (T.T.A.B. 1973).

Nevertheless, timing of the motion for leave to amend is a major factor in determining prejudice to the non-movant. *See Media Online, Inc. v. El Clasificado, Inc.*, 88 U.S.P.Q.2d 1285 (T.T.A.B. 2008). For example, when new claims are based on facts that were within the movant’s knowledge at the time of the original filing, leave to amend will likely be denied. *Id.* (citing *Int’l Fin. Co. v. Bravo Co.*, 64 U.S.P.Q.2d 1597 (T.T.A.B. 2002)). In contrast, where a motion to amend is “filed as soon as any ground for such amendment, *e.g.*, newly discovered evidence, becomes apparent,” such requests will often be granted. *Id.* For example, where discovery reveals the basis for new allegations, it is appropriate to grant the Opposer an opportunity to amend. *Karsten Mfg. Corp. v. Editoy AG*, 79 U.S.P.Q.2d 1783 (T.T.A.B. 2006) (granted where new information learned at deposition in February and motion brought in May).

To assuage any fears of prejudice, the Board may reopen the discovery period to allow discovery directed to the new matters raised in the movant’s amendment. TBMP § 507.02(a). Indeed, the Board will frequently reopen discovery to avoid prejudice but still permit the

amendment. *See, e.g., Black & Decker, Corp. v. Emerson Elec. Co.*, 84 U.S.P.Q.2d 1482, 1486 (T.T.A.B. 2008) (“the only way the Board could avoid prejudice to applicant would be by reopening the trial phase of this proceeding so that applicant could submit evidence addressing this ground”); *Board Ltd. v. FMC Corp.*, 59 U.S.P.Q.2d 1701 (T.T.A.B. 2000) (reopening discovery for limited purpose of conducting discovery on new claim).

2. New Evidence Gives Rise to New Claims

During the course of discovery, Opposer has come to receive numerous admissions from Applicant which constitute newly acquired evidence that supports new grounds for opposition to their application.

a. Lack of Bona Fide Intent to Use

First, in Mr. Gabriel’s March 3, 2016 deposition, he explained that Applicant first conceived the MEZQUILA mark in 2004 but did not seek to have it registered until 2015. (*See* Meyer Decl., at ¶4, Exhibit 2 at 18:4–18:17, 21:5-19.) Mr. Gabriel then admitted he only filed the present application because “it would be a good idea to have it trademarked as a brand name” in case he ever wanted to import his own tequila. (*Id.* at 21:11-15.) Mr. Gabriel also noted that Applicant does not have any concrete current or future plans to use the MEZQUILA mark, either in connection with agave-based alcoholic beverages or otherwise. (*Id.* at 29:12–31:10.) Specifically, Applicant admitted it has no written business plans for use of the MEZQUILA mark. (*Id.* at 32:25–33:4.) Moreover, Mr. Gabriel acknowledged that Applicant does not have any contracts in place for present or future use of the MEZQUILA mark in connection with agave-based alcoholic beverages. (*Id.* at 41:5-7.)

Section 1(b)(1) of the Trademark Act provides that, “[a] person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in

commerce may request registration[.]” 15 U.S.C. 1051(b)(1). The determination of whether an applicant has a bona fide intent to use the mark in commerce “is to be a fair, objective determination based on all the circumstances.” *Lane Ltd. v. Jackson Int’l Trading Co.*, 33 U.S.P.Q.2d 1351, 1357 (T.T.A.B. 1994). This requirement “must be read in conjunction with the revised definition of ‘use in commerce’ in Section 45 of the Trademark Act, which [was] amended to require that such use be ‘in the ordinary course of trade, *and not made merely to reserve a right in a mark.*” *Lincoln Nat’l Corp. v. Anderson*, 2014 TTAB LEXIS 52 (Feb. 21, 2014) (quoting *Commodore Elecs. Ltd. v. CBM Kabushiki Kaisha*, 26 U.S.P.Q.2d 1503, 1507 (T.T.A.B. 1993)) (emphasis added).

Accordingly, these admissions form the basis of new and independent grounds for opposition to the present application. Specifically, the lack of a business plan and the lack of contracts demonstrate the lack of a bona fide intent to use the mark in commerce in connection with the claimed goods. Applicant also has admitted that, at the time of application, he had no intent to use the mark in commerce but instead sought its registration because “it would be a good idea” in case he ever wanted to import his own tequila. These new admissions warranted the addition of ¶¶13–22 in the Amended Notice of Opposition. (Meyer Decl., ¶5, Exhibit 3); *see Swatch AG v. M.Z. Berger & Co.*, 108 U.S.P.Q.2d 1463, 1477 (T.T.A.B. 2013) (finding applicant’s intent at time of filing application was merely to reserve a right in a mark “in case it made the firm decision to begin developing an associated product at some future time”).

b. Geographically Deceptively Misdescriptive

Next, during Mr. Gabriel’s deposition, Applicant specifically explained “mezcal” is a well-known term used to describe an agave-based alcoholic beverage that originates in Oaxaca, Mexico, and admitted “tequila” is also a well-known term used to describe an agave-based

alcoholic beverage that originates in Jalisco, Mexico. (Meyer Decl., Exhibit 2, at 94:21-95:7.) It is a reasonable inference, then, that the MEZQUILA mark was a combination and telescoping of both “mezcal” (MEZ) and “tequila” (QUILA), each popular terms that describe various agave-based alcoholic beverages. *See, e.g., Telemed Corp. v. Tel-Med, Inc.*, 588 F.2d 213 (7th Cir. 1978) (telescoping of TELEPHONE and MEDICINE to TELEMED did not obviate finding of genericness); *In re Airescue Int’l*, 2012 TTAB LEXIS 38 (T.T.A.B. Feb. 6, 2012) (“[T]he separate words [of AIR and RESCUE] retain their generic significance in applicant’s telescoped compound term AIRESCUE.”).

These statements give rise to a geographically misdescriptive challenge to the Applicant’s Mark because Mr. Gabriel explicitly acknowledged that both “mezcal” and “tequila” are words that associate the goods—agave-based alcoholic beverages—with a specific origin; mezcal from Oaxaca and tequila from Jalisco. Yet, Applicant has indicated that some of their goods that will utilize the MEZQUILA mark may not originate from these locations. (Meyer Decl., Exhibit 2, at 95:16-20.) Therefore, the mark is geographically deceptively misdescriptive and the addition of ¶¶23–29 to the Amended Notice of Opposition is proper. *See In re Premiere Distillery, LLC*, 103 U.S.P.Q.2d 1483, 1484 (T.T.A.B. 2012) (citing *In re Cal. Innova., Inc.*, 329 F.3d 1334 (Fed. Cir. 2003)) (to maintain a geographically deceptively misdescriptive challenge under Section 2(e)(3), Opposer “must establish that (1) the primary significance of the mark is a generally known geographic location, (2) the relevant public would be likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place, and (3) the misrepresentation would be a material factor in the consumer’s decision to purchase the goods”).

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c. *Deceptively Misdescriptive*

Finally, Mr. Gabriel discussed the potential contents of his proposed agave-based alcoholic beverage. Applicant admitted it may use the MEZQUILA mark with beverages that may not include *both* mezcal and tequila. (Meyer Decl., Exhibit 2, at 33:25-34:9, 95:11-20.) Instead, Mr. Gabriel explained, it is possible that the MEZQUILA mark will be used in connection with agave-based alcoholic beverages that contain only tequila—or perhaps tequila and some non-agave spirit, potentially grain alcohol. (*Id.* at 33:25–34:9.)

The test for determining whether a mark is deceptive under Section 2(a) has been stated as: (1) Is the term misdescriptive of the character, quality, function, composition, or use of the goods?; (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods?; and (3) If so, is the misdescription likely to affect the decision to purchase? See *In re ALP of South Beach Inc.*, 79 U.S.P.Q.2d 1009, 1010 (T.T.A.B. 2005) (citing *In re Budge Manuf. Co.*, 857 F.2d 773 (Fed. Cir. 1988)). Accordingly, because the combined, telescope term MEZQUILA implies a mixture of both mezcal and tequila, but does not, in fact, contain the two, it is misdescriptive—deceptively so. Thus, the new evidence supports the addition of ¶¶30–36 in the Amended Notice of Opposition.

3. New Evidence Amplifies Existing Allegations

The deposition testimony and written discovery responses also provide added support to Opposer’s preexisting claims. For example, Mr. Gabriel’s acknowledgement that “mezcal” and “tequila” are each well-known terms used to describe agave-based alcoholic beverages with specific origins, together with his admission that the term MEZQUILA is merely a telescoping of these two words, supports the argument that Applicant’s Mark is generic. These admissions also form the basis for a merely descriptive without acquired distinctiveness challenge to the

Applicant's Mark. Mr. Gabriel's admission that the Applicant has not used the MEZQUILA mark in commerce yet further buttresses the notion that the mark has not acquired any distinctiveness. Accordingly, the addition of ¶¶31–51 is appropriate. *See* TBMP § 507.02 (explicitly allowing amendments to "amplify" allegations already included in a pleading).

IV. CONCLUSION

For the foregoing reasons, Opposer respectfully requests the Board grant it leave to file the Amended Notice of Opposition filed with the Meyer Decl. as **Exhibit 3**.

DATE: April 20, 2016

Respectfully submitted,
GORDON & REES LLP

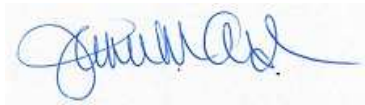
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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of this **Amended Notice of Opposition** is being served by First Class Mail service and/or e-mail, to addressees on April 20, 2016 as follows:

Miguel Villarreal, Jr.
Michael D. Paul
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300 Convent Street, Suite 1080
San Antonio, Texas 78205
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mpaul@gunn-lee.com
Attorneys for Applicant



Janene M. Alvord

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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the United States)	
)	
Applicant.)	
<hr style="border: 1px solid black;"/>)	

**DECLARATION OF SUSAN MEYER IN SUPPORT OF
MOTION FOR LEAVE TO AMEND**

1. I am an attorney at law, licensed to practice in the states of California, Colorado, and South Dakota, and am a member in good standing of the respective State Bars. I am also licensed to practice before the United States Patent and Trademark Office (“PTO”).

2. I am an attorney for Opposer Mas Cantina, LLC and, as such, have firsthand knowledge of the matters stated herein. If called as a witness, I could and would competently testify to the facts set forth below, as I know each to be true based on my own personal knowledge. I make this declaration in support of Opposer’s Motion for Leave to Amend.

3. Attached as **Exhibit 1** is a true and correct copy of the January 13, 2016 Assignment between Opposer Mas Cantinas, LLC and Los Santos, LLC as it was recorded with the PTO on April 4, 2016.

4. Attached as **Exhibit 2** are true and correct copies of excerpts from Applicant Johnny Gabriel's deposition, taken on March 3, 2016.

5. Attached as **Exhibit 3** is a true and correct copy of Opposer's PROPOSED Amended Notice of Opposition.

I declare, under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

DATE: April 20, 2016

Respectfully submitted,
GORDON & REES LLP

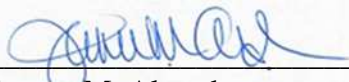
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Attorneys for Opposer

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mpaul@gunn-lee.com
Attorneys for Applicant



Janene M. Alvord

Exhibit 1

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1

Stylesheet Version v1.2

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Mas Cantinas LLC		01/13/2016	Limited Liability Company:
RECEIVING PARTY DATA			
Name:	Los Santos LLC		
Street Address:	147 Del Oro Lagoon		
City:	Novato		
State/Country:	CALIFORNIA		
Postal Code:	94909		
Entity Type:	Limited Liability Company: CALIFORNIA		
PROPERTY NUMBERS Total: 5			
Property Type	Number	Word Mark	
Serial Number:	86609601	SANTO ESPIRITU MEZQUILA	
Serial Number:	86609616	SANTO MEZQUILA	
Serial Number:	86518188	SANTO AGAVE	
Serial Number:	86518182	SANTO MEZCAL	
Serial Number:	86609627	SANTO ESPIRITU	
CORRESPONDENCE DATA			
Email:	ipdocket@gordonrees.com		

<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	Susan B. Meyer
Address Line 1:	101 West Broadway, Suite 2000
Address Line 4:	San Diego, CALIFORNIA 92101
NAME OF SUBMITTER:	Susan B. Meyer
Signature:	/Susan B. Meyer/
Date:	04/04/2016
Total Attachments: 4 source=MMON Assignment#page1.tif source=MMON Assignment#page2.tif source=MMON Assignment#page3.tif source=MMON Assignment#page4.tif	
RECEIPT INFORMATION ETAS ID: TM379332 Receipt Date: 04/04/2016 Fee Amount: \$140	

**ASSIGNMENT OF ALL THAT PORTION OF THE BUSINESS TO WHICH THE
INTENT-TO-USE TRADEMARK APPLICATIONS PERTAIN**

THIS ASSIGNMENT OF ALL THAT PORTION OF THE BUSINESS TO WHICH THE INTENT-TO-USE APPLICATIONS PERTAIN (this "Agreement") is made and entered into as of January 13, 2016 (the "Effective Date") by and between Mas Cantinas LLC, a California limited liability company ("Assignor"), and Los Santos LLC, a California limited liability company ("Assignee), with reference to the following:

RECITALS

Assignor wishes to assign all of Assignor's right, title and interest in and to all that portion of the business to which the intent-to-use trademark applications, identified on attached Exhibit A, specifically including the pending US Intent-to-Use trademark applications (collectively, the "Marks") including all national, state and foreign registrations, applications for registration and renewals and extensions thereof, all common law rights and goodwill related thereto, together with that portion of Assignors' business associated with and symbolized by the Marks and all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued, to Assignee in accordance with the provisions of this Agreement, and Assignee wishes to accept such assignment.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficient of which is hereby acknowledged by Assignor, the parties hereto agree as follows:

AGREEMENT

1. **Assignment.** Assignor hereby transfers, conveys and assigns all of its rights, title and interest in and to all that portion of the business to which the intent-to-use trademark applications identified on attached Exhibit A to Assignee as of the Effective Date. Assignor further transfers, conveys and assigns to Assignee, without any additional consideration, all ownership, right, and interest in and to that portion of the Assignor's business symbolized by the Marks, and all goodwill associated with the foregoing specifically including all the assets identified in Exhibit A which assets specifically include the pending US Intent-to-Use trademark applications in accordance with 15 USC Sec. 1060.

2. **Payment for Assets.** Within fifteen (15) days of the Effective Date, Assignee shall pay Assignor as partial consideration the sum of one hundred dollars (\$100).

3. **Miscellaneous Provisions.**

(a) **Successors and Assigns.** This Assignment shall be binding on and shall inure to the benefit of the parties hereto plus their successors and assigns.

(b) **No Further Interest in Assets.** After the Effective date Assignor shall have no further interest in or to the business assigned hereby including the trademarks identified in Exhibit A.

(c) Further Assurances. Assignor and Assignee shall enter into such other agreements as are reasonably necessary to carry out the purpose of this Assignment at the costs of Assignee. Assignor shall assist Assignee and provide such reasonable cooperation and assistance, at Assignee's expense, as Assignee may reasonably request in exercising and/or enforcing Assignee's rights in and to the Marks associated therewith.

(d) Entire Agreement. This Assignment constitutes the entire agreement between the parties and the subject matter hereof. No modification to his Agreement shall have effect unless in writing and executed by both parties.

(e) Governing Law; Arbitration. This Assignment shall be governed by the law of the state of California and any disputes relating hereto shall be resolved by binding arbitration in accordance with the rules of the American Arbitration Association.

(f) Multiple Counterparts. This Assignment may be signed in separate counterparts which as signed shall constitute one fully executed Assignment.


(g) Titles and Captions. Titles and captions are for convenience only and shall not constitute a portion of this Agreement and shall not affect the interpretation of any of its provisions.

(h) Modifications and Waiver. This Agreement cannot be modified, or any of the terms waived, except by an instrument in writing executed by each party..

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

ASSIGNOR

Mas Cantinas LLC

By: 
Name: _____
Title: Manager

ASSIGNEE

Los Santos LLC

By: _____
Name: _____
Manager

(c) Further Assurances. Assignor and Assignee shall enter into such other agreements as are reasonably necessary to carry out the purpose of this Assignment at the costs of Assignee. Assignor shall assist Assignee and provide such reasonable cooperation and assistance, at Assignee's expense, as Assignee may reasonably request in exercising and/or enforcing Assignee's rights in and to the Marks associated therewith.

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the Effective Date.

ASSIGNOR

Mas Cantinas LLC

By: _____
Name: _____
Title: Manager

ASSIGNEE

Los Santos LLC

By: Jack Daniels
Name: Jack Daniels
Manager

EXHIBIT A

US (Intent-to-Use) and Mexican trademarks and pending application for

SANTO ESPIRITU

SANTO MEZQUILA

SANTO ESPIRITU MEZQUILA

SANTO AGAVE

SANTO MEZCAL

All that portion of the business to which the above Intent-to-use trademark applications pertain.

Exhibit 2

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<p>1 Liquors?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did your wife, Rosalie, also work for SA</p> <p>4 Discount Liquors?</p> <p>5 A. Up until 2004.</p> <p>6 Q. Okay. And what was her title at SA Discount</p> <p>7 Liquors?</p> <p>8 A. Either president or vice-president.</p> <p>9 Q. And did she come into work every day and work</p> <p>10 at the company full-time?</p> <p>11 A. Yes.</p> <p>12 Q. And she also stepped away from SA Discount</p> <p>13 Liquors in 2004?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. In 2004, did you consider that a</p> <p>16 retirement?</p> <p>17 A. Yes.</p> <p>18 Q. How long have you and Rosalie been married?</p> <p>19 A. 1980, so that would be, what, 20, 36 years.</p> <p>20 Q. And have you always worked together?</p> <p>21 A. Yes.</p> <p>22 Q. Do you have any other businesses currently,</p> <p>23 other than the Mezquila matter that we're talking about</p> <p>24 right now?</p> <p>25 A. Do I have any what?</p>	<p>1 Q. Do you remember what made you think of -- think</p> <p>2 of this?</p> <p>3 A. Just happened to think of it. That's all.</p> <p>4 Q. Did you write it down or -- how did you</p> <p>5 remember it between 2004 and, say, 2015?</p> <p>6 A. Just -- I just remembered. That's all.</p> <p>7 Q. Did you talk to anybody about your idea back in</p> <p>8 2004?</p> <p>9 A. Yes. We met with different distillers in</p> <p>10 Oaxaca.</p> <p>11 Q. In 2004?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And did you mention to them the name</p> <p>14 "Mezquila"?</p> <p>15 A. I think so.</p> <p>16 Q. And who did you meet with in 2004?</p> <p>17 A. Oh, I don't remember.</p> <p>18 Q. Were these distillers that you knew previously?</p> <p>19 A. No.</p> <p>20 Q. Had you traveled there before to meet with</p> <p>21 Tequila --</p> <p>22 A. No.</p> <p>23 Q. -- distillers? Okay. Do you remember how long</p> <p>24 you were there?</p> <p>25 A. Three days.</p>
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<p>1 Q. Any other businesses that you're working with,</p> <p>2 working for currently?</p> <p>3 A. No.</p> <p>4 Q. Okay. Let's talk a little bit about Mezquila.</p> <p>5 Am I pronouncing that correctly? Is that how you intend</p> <p>6 to pronounce it?</p> <p>7 A. Mezquila.</p> <p>8 Q. Okay. Good. Who came up with the idea for</p> <p>9 this product?</p> <p>10 A. I did.</p> <p>11 Q. And how did you come up with the idea?</p> <p>12 A. Basically there was a Tequila shortage in '04,</p> <p>13 so we were -- went to Oaxaca and tried to buy a</p> <p>14 Tequila-type product, and that's when I thought of</p> <p>15 Tequila and the Mezquila.</p> <p>16 Q. So in 2004, there was a shortage of Tequila?</p> <p>17 A. Correct.</p> <p>18 Q. Do you know why?</p> <p>19 A. Agave, there wasn't enough agave planted.</p> <p>20 Q. And so you went to Mexico to see if you could</p> <p>21 source additional Tequila; is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And how did that lead to you coming up</p> <p>24 with this Mezquila product?</p> <p>25 A. I wanted a brand name that could work.</p>	<p>1 Q. And when you left, what happened next on this</p> <p>2 idea?</p> <p>3 A. Nothing.</p> <p>4 Q. And why not?</p> <p>5 A. I couldn't find a producer to be able to make</p> <p>6 it work.</p> <p>7 Q. Do you remember the reason?</p> <p>8 A. Price.</p> <p>9 Q. And what do you mean by "price"?</p> <p>10 A. In other words, the cost of the goods.</p> <p>11 Q. Was it too high?</p> <p>12 A. Yes.</p> <p>13 Q. Too -- was it too high for the Texas price</p> <p>14 point you were thinking of selling it at?</p> <p>15 A. Yes.</p> <p>16 Q. And what -- if you remember, what Texas price</p> <p>17 point were you thinking of in 2004?</p> <p>18 A. It was under \$7.</p> <p>19 Q. Retail price?</p> <p>20 A. Wholesale.</p> <p>21 Q. And was the price too high then?</p> <p>22 A. Yes.</p> <p>23 Q. Because of the shortage?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall about how much it was then?</p>

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<p>1 A. Cost to me?</p> <p>2 Q. Yes.</p> <p>3 A. I don't remember, Miss. I know it was too</p> <p>4 high.</p> <p>5 Q. Okay. And when did you next start thinking</p> <p>6 about doing the Mezquila product?</p> <p>7 A. When we -- about two months before we filed a</p> <p>8 trademark in January of '14, I think. '15 -- I'm not --</p> <p>9 I don't remember. '14 or '15. No, '15. We filed it in</p> <p>10 '15.</p> <p>11 Q. Okay. And why did this come back up again 11</p> <p>12 years later?</p> <p>13 A. I thought that it would be a good idea to have</p> <p>14 it trademarked as a brand name in case I wanted to bring</p> <p>15 in my own Tequila.</p> <p>16 Q. So you filed the trademark application, and</p> <p>17 then what else did you do to start working toward</p> <p>18 producing the product?</p> <p>19 A. Contacting a distiller in February of '15.</p> <p>20 Q. And do you remember what distiller you</p> <p>21 contacted?</p> <p>22 A. The Don Ramon people.</p> <p>23 Q. And had you known them before?</p> <p>24 A. Yes.</p> <p>25 Q. And how did you know them before?</p>	<p>1 Gabrielspirits.com. Is that another company?</p> <p>2 A. Repeat again.</p> <p>3 Q. Gabrielspirits.com.</p> <p>4 A. No, ma'am. That's just an e-mail.</p> <p>5 Q. Okay. So is that related to Gabriel</p> <p>6 Investments?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Okay. So it's not a separate company?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now, the -- the Mezquila product, I</p> <p>11 noticed on the trademark application, you and Rosalie</p> <p>12 own -- own the application personally, and it's not owned</p> <p>13 by a company; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. And why did you do it that way?</p> <p>16 A. We just thought it would fit, you know, what we</p> <p>17 do for an investment for the future.</p> <p>18 Q. Do you intend on having a corporation or some</p> <p>19 other corporate entity produce the product and sell the</p> <p>20 product, or are you going to do it personally?</p> <p>21 A. Legally, we have to have other companies make</p> <p>22 it and distribute it.</p> <p>23 Q. And what do you mean by that?</p> <p>24 A. That, you know, somebody has to make it,</p> <p>25 somebody has to distill the Tequila, somebody has to</p>
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<p>1 A. Selling Don Ramon in the area.</p> <p>2 Q. Okay. Is Don Ramon a brand?</p> <p>3 A. Yes.</p> <p>4 Q. A brand of Tequila, I assume?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. We'll talk about them here in a</p> <p>7 little -- a little while. The Mezquila product, is it</p> <p>8 the intention to sell it as a larger family of products,</p> <p>9 or is it going to be a stand-alone product?</p> <p>10 A. It's just a brand name.</p> <p>11 Q. Let's talk a little bit about the -- about the</p> <p>12 word "Mezquila." Does it have any special meaning?</p> <p>13 A. No.</p> <p>14 Q. The -- the "quila" part, I guess, references</p> <p>15 "Tequila." What does M-E-Z reference or mean?</p> <p>16 MR. PAUL: I'm going to object to that</p> <p>17 question, but -- form. Go ahead and answer.</p> <p>18 A. I just -- I don't know. I just like the brand</p> <p>19 name. That's all.</p> <p>20 Q. Did you consider any other names?</p> <p>21 A. My wife's name, but, no. No. We just -- I</p> <p>22 just liked the name, the brand name, and I thought it was</p> <p>23 catchy.</p> <p>24 Q. On some e-mails that I've seen on documents</p> <p>25 you've produced, I see the domain name</p>	<p>1 bottle it, and somebody has to distribute it and sell it.</p> <p>2 Q. You going to have to forgive me because I don't</p> <p>3 know much about the liquor business, so I may be asking</p> <p>4 really basic questions here. I understand someone has to</p> <p>5 make the Tequila. Why doesn't that same company bottle</p> <p>6 the Tequila? How is that different?</p> <p>7 A. It -- you talking about the company that</p> <p>8 distills the Tequila?</p> <p>9 Q. Uh-huh.</p> <p>10 A. Yeah, that's one way. They can distill it or</p> <p>11 somebody else can bottle it.</p> <p>12 Q. And why doesn't the distiller bottle it?</p> <p>13 A. Because of the tax -- it's the tax, ma'am. In</p> <p>14 other words, it's lower tax if somebody else bottles it.</p> <p>15 Q. Do you know why?</p> <p>16 A. Taxes.</p> <p>17 Q. Well, I'm just as confused of taxes -- sales</p> <p>18 taxes, is that what you're talking about or -- so there's</p> <p>19 Federal taxes on bottling?</p> <p>20 A. Federal taxes on the liquor.</p> <p>21 Q. Okay. It ends up being less expensive if</p> <p>22 someone distills it and another -- someone bottles it?</p> <p>23 A. In the United States.</p> <p>24 Q. Okay. And do you have to have a bottler here,</p> <p>25 or can it be bottled in, say, Mexico?</p>

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<p>1 A. It can be bottled in Mexico or bottled here.</p> <p>2 Q. Okay. And we'll talk in a little bit about</p> <p>3 your plan on that. Let's take a look at what we'll label</p> <p>4 Exhibit 2.</p> <p>5 (Exhibit Number 2 marked)</p> <p>6 Q. I'm going to hand you what's been labeled</p> <p>7 Exhibit 2. Do you recognize this document?</p> <p>8 A. Yes.</p> <p>9 Q. And what is it?</p> <p>10 A. Amar sent me a date for production and</p> <p>11 distribution -- or production, mostly. He sent me a</p> <p>12 timeline for production.</p> <p>13 Q. Okay. And when did he send this?</p> <p>14 A. Whatever date it has on there. November.</p> <p>15 November 6, '15.</p> <p>16 Q. Okay. Let's talk a little bit about Amar. Who</p> <p>17 is Amar?</p> <p>18 A. He's the owner of the distribution in Texas.</p> <p>19 Q. And how do you know him?</p> <p>20 A. Through -- through calls that he makes to the</p> <p>21 company, to Discount Liquor, Gabriel Liquors.</p> <p>22 Q. And does he distribute products that Discount</p> <p>23 Liquors then retails?</p> <p>24 A. Yeah.</p> <p>25 Q. And how long have you known Amar?</p>	<p>1 A. Yes.</p> <p>2 Q. And what -- what had you requested from him?</p> <p>3 A. Trying to work out with the company that he</p> <p>4 distributes, Antigua Cruz, whether they could produce it</p> <p>5 or make it or were they -- was it doable.</p> <p>6 Q. So the company that makes Antigua Cruz, was the</p> <p>7 plan that they would also make Mezquila?</p> <p>8 A. Yes.</p> <p>9 Q. And is that still the plan?</p> <p>10 A. Is that what?</p> <p>11 Q. Is that still the plan today?</p> <p>12 A. Not the same, no.</p> <p>13 Q. Okay. Okay. So this proposal was related to a</p> <p>14 different company producing the product than what you're</p> <p>15 considering today, in 2016?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Have you received anything similar to</p> <p>18 this?</p> <p>19 A. Do I?</p> <p>20 Q. Anything -- have you received anything similar</p> <p>21 to this --</p> <p>22 A. No.</p> <p>23 Q. -- related to your -- to the new company that's</p> <p>24 going to be producing it?</p> <p>25 A. No.</p>
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<p>1 A. Maybe March or April of '15.</p> <p>2 Q. And you didn't know him before that?</p> <p>3 A. No.</p> <p>4 Q. So how did your relationship with Amar start?</p> <p>5 A. I met him through my son, Ronnie Gabriel.</p> <p>6 Q. And did Ronnie introduce you to him?</p> <p>7 A. Yes.</p> <p>8 Q. And why did Ronnie introduce you to him?</p> <p>9 A. He was doing business with A to Z and selling</p> <p>10 some of their products and for me to meet them.</p> <p>11 Q. Did he introduce you to him specifically</p> <p>12 related to the Mezquila product that you were planning?</p> <p>13 A. No.</p> <p>14 Q. So how did the relationship develop into you</p> <p>15 talking to him about distributing this product?</p> <p>16 A. He had -- he had some Tequila that I recognized</p> <p>17 from before that were distributed by other people on</p> <p>18 Antigua Cruz, and we started talking about the business</p> <p>19 and stuff, and that's it.</p> <p>20 Q. This e-mail that Amar sent in November has an</p> <p>21 attachment that's on page 2. Do you see page 2? As far</p> <p>22 as you know, who wrote this?</p> <p>23 A. Amar.</p> <p>24 Q. He did. And did he write this because you</p> <p>25 requested it?</p>	<p>1 Q. Okay. Is this the only production plan that</p> <p>2 Mr. -- or that Amar sent to you?</p> <p>3 A. Yes.</p> <p>4 Q. Did this seem realistic, the plan that he had?</p> <p>5 A. I didn't know everything, so I just understood</p> <p>6 by the regular production very sensible. I don't know</p> <p>7 all the laws.</p> <p>8 Q. Okay. Okay. So Amar knows all the laws</p> <p>9 related to distribution and the like, and so you're</p> <p>10 counting on him for that?</p> <p>11 A. I depended on him. Since he had been in</p> <p>12 distribution, he knows more than I do.</p> <p>13 Q. Okay. Is Amar the person primarily responsible</p> <p>14 for planning distribution for A to Z?</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. Do you work with anybody else at A to Z?</p> <p>17 A. Just one of its local employees, but I don't</p> <p>18 remember the name.</p> <p>19 Q. By "local employee," you mean somebody who</p> <p>20 distributes here in San Antonio for him?</p> <p>21 A. I don't -- yeah, I think they have an office in</p> <p>22 Austin, but I don't know the people.</p> <p>23 Q. Okay. So on the Mezquila product, you mainly</p> <p>24 work with Amar?</p> <p>25 A. Yes.</p>

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1	Q. And is the plan still today to have A to Z	1	A. No.
2	distribute Mezquila?	2	Q. Have you made any sales projections?
3	A. Yes.	3	A. No.
4	Q. Do you know, has Amar distributed start-up	4	Q. And why not? Why not?
5	products like this before?	5	A. I just -- we haven't gotten that far.
6	A. Repeat again.	6	Q. Have you thought about the amount that you're
7	Q. Has Amar distributed products that weren't	7	going to sell, even ballpark figures, number of bottles
8	already distributed by someone else or established	8	you think you will sell the first year, number of bottles
9	products, brand-new start-up products? Has he done that	9	the second year?
10	before?	10	A. No, ma'am, not really.
11	A. I don't know.	11	Q. Okay. Do you plan on having anyone, other than
12	Q. Let's talk a little bit about your business	12	A to Z, distribute this product?
13	plans for the Mezquila product. I think you mentioned	13	A. No.
14	that you need to have a distiller, a bottler, a	14	Q. And what geographic area does A to Z distribute
15	distributor. What is your plan for your company -- your	15	in?
16	and Rosalie's company, or just the two of you as	16	A. Texas.
17	individuals, as far as employees you will need to do this	17	Q. Okay. So is the plan only to sell Mezquila in
18	work?	18	Texas?
19	A. Rosalie and I -- you talking about starting a	19	A. For now.
20	company and hiring employees?	20	Q. Okay. Best case scenario, what expansion would
21	Q. Will you need employees?	21	you like to see?
22	A. No.	22	A. It would be the whole United States.
23	Q. Okay. Why not?	23	Q. And could A to Z handle that distribution or
24	A. All the other production and distribution	24	would you need other distributors?
25	and -- distribution is done by other people.	25	A. That, I don't know.
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1	Q. Okay. Will you need marketing people?	1	Q. Do you know A to Z's distribution capabilities?
2	A. No.	2	A. No.
3	Q. And why not?	3	Q. Do you know how many retail outlets they
4	A. A to Z does marketing.	4	distribute to?
5	Q. And will they handle all the advertising?	5	A. No.
6	A. Yes.	6	Q. Do they work in the whole state of Texas?
7	Q. Okay. Has A to Z given you a marketing or	7	A. Yes.
8	advertising plan?	8	Q. Do you know how many employees they have?
9	A. No.	9	A. No.
10	Q. And why not?	10	Q. Do you know how many salespeople they have?
11	A. Production won't be until May.	11	A. No.
12	Q. Have you talked with Amar about the type of	12	Q. Have you talked to their marketing department?
13	advertising or marketing you're planning to do?	13	A. No.
14	A. No.	14	Q. Do they have a marketing department?
15	Q. Has he mentioned any thoughts about marketing	15	A. I do not know.
16	and advertising?	16	Q. Okay. Do they have an advertising department?
17	A. No.	17	A. Do not know.
18	Q. As far as salespeople go, will they all be	18	Q. Do they do in-house advertising work, or do
19	working for Amar?	19	they send that to outside advertising agencies?
20	A. Yes.	20	A. Do not know.
21	Q. Okay. So you won't have -- as far as you know,	21	Q. Okay. Are you planning on having a website?
22	you won't have any employees; is that correct?	22	A. What?
23	A. Yes.	23	Q. Are you planning on having a website?
24	Q. Will you have a physical location, office	24	A. No.
25	space, that kind of thing?	25	Q. Okay. We've just been talking about your

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<p>1 business plans for -- for the Mezquila product. Do you</p> <p>2 have any written business plans, other than the one we</p> <p>3 saw in Exhibit 2?</p> <p>4 A. No.</p> <p>5 Q. Do you know if A to Z has any business plans</p> <p>6 related to Mezquila?</p> <p>7 A. Do not know.</p> <p>8 Q. Would Amar be the person to ask about that?</p> <p>9 A. Probably.</p> <p>10 Q. Do you anticipate having to purchase anything</p> <p>11 to run this business, for example, trucks, computers --</p> <p>12 A. No.</p> <p>13 Q. -- desks, that sort of thing?</p> <p>14 A. No.</p> <p>15 Q. Okay. Looking at the documents that we were</p> <p>16 given, I noticed that it looks like maybe there's two</p> <p>17 plans for -- or plans for two different types of this</p> <p>18 brand, one a gold, and the other a silver; is that</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. What's -- what's the difference between</p> <p>22 the two?</p> <p>23 A. The white -- or the silver comes out without</p> <p>24 any aging. The gold has some aging in the barrel.</p> <p>25 Q. Is the plan for Mezquila to be pure Tequila,</p>	<p>1 or water the distiller is planning on?</p> <p>2 A. No.</p> <p>3 Q. Who makes that decision about the mix? Is it</p> <p>4 the distiller or the bottler?</p> <p>5 A. Both.</p> <p>6 Q. Okay. So do they work together on that?</p> <p>7 A. Yes.</p> <p>8 Q. Is this taste-tested? How do they decide?</p> <p>9 A. I don't know, really. I don't know that</p> <p>10 production side.</p> <p>11 Q. Is this something that when they start</p> <p>12 distilling, that you're going to make the decision?</p> <p>13 A. I don't make that decision.</p> <p>14 Q. Okay. So who would make that decision?</p> <p>15 A. The bottler.</p> <p>16 Q. Okay. And do you know what they would consider</p> <p>17 in making that decision?</p> <p>18 A. I do not know, ma'am. It's all production. I</p> <p>19 do not know.</p> <p>20 Q. Okay. Do you know if they've started making</p> <p>21 that blend yet for the Mezquila product?</p> <p>22 A. No.</p> <p>23 Q. You don't know, or they haven't started?</p> <p>24 A. I don't know. I don't know, but -- I don't</p> <p>25 know where they're at right now, so...</p>
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<p>1 not blended with anything else?</p> <p>2 A. The plan is to be a mixed, at least by law it</p> <p>3 has to be 51 percent agave.</p> <p>4 Q. And what's the other percentage?</p> <p>5 A. Grain neutral spirit or water.</p> <p>6 Q. What is a grain neutral spirit?</p> <p>7 A. Just alcohol.</p> <p>8 Q. So grain alcohol?</p> <p>9 A. Yes, ma'am.</p> <p>10 Q. Maybe from wheat or corn or --</p> <p>11 A. I do not know.</p> <p>12 Q. Okay. Okay. Well, do you know what neutral</p> <p>13 refers to?</p> <p>14 A. I do not know.</p> <p>15 Q. Okay. But both the gold and the silver will be</p> <p>16 at least 51 percent agave?</p> <p>17 A. That is the law.</p> <p>18 Q. Okay. Whose law?</p> <p>19 A. Mexico, United States. I don't know.</p> <p>20 Q. Okay.</p> <p>21 A. Probably Mexico.</p> <p>22 Q. Okay. And by 51 percent agave, does that mean</p> <p>23 51 percent derived from -- from the agave plant?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. So do you know what grain neutral spirit</p>	<p>1 Q. Okay. Will they give you a few samples to try,</p> <p>2 and then you will make the final decision about which</p> <p>3 blend should be used?</p> <p>4 A. They make the blend, and we just either approve</p> <p>5 it or don't approve it.</p> <p>6 Q. Okay. And do you know how long it will be</p> <p>7 until they get to that point?</p> <p>8 A. Probably May.</p> <p>9 Q. Other than the gold and silver versions, are</p> <p>10 you planning any other products under the Mezquila mark?</p> <p>11 A. It depends on how successful it is.</p> <p>12 Q. Okay. So right now you're planning those two?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Do you have any thoughts or dreams about</p> <p>15 doing additional versions?</p> <p>16 A. At my age, I don't have much to look for in the</p> <p>17 future, but it could be. Whatever works out.</p> <p>18 Q. Okay. So there may be additional Mezquila</p> <p>19 products in addition to the gold and silver?</p> <p>20 A. It all depends on how the two do, first.</p> <p>21 Q. Okay. Is the Tequila -- retail Tequila</p> <p>22 business a highly competitive one?</p> <p>23 A. Extremely.</p> <p>24 Q. And why is that? Again, forgive me that I</p> <p>25 don't know anything about this business.</p>

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<p>1 A. I guess everybody wants to hit a home run like</p> <p>2 Patron.</p> <p>3 Q. Okay. Do Tequila brands come and go, or do</p> <p>4 they generally stay on the market, in your experience</p> <p>5 doing retail sales?</p> <p>6 A. They come and go.</p> <p>7 Q. Do you know approximately how many Tequila</p> <p>8 brands are out there right now?</p> <p>9 A. No, ma'am.</p> <p>10 Q. Hundreds, would that be safe to say?</p> <p>11 A. Probably thousands.</p> <p>12 Q. Okay. So why -- why do you think yours is</p> <p>13 going to make it?</p> <p>14 A. What?</p> <p>15 Q. Why do you think yours is going to make it?</p> <p>16 What makes it special?</p> <p>17 A. All I know is I think we have a key -- just a</p> <p>18 successful brand with a name -- with a name brand and</p> <p>19 also with the production people behind it.</p> <p>20 Q. Other than the name and the production people</p> <p>21 behind it, anything else that you think will contribute</p> <p>22 to the success of this product?</p> <p>23 A. Just the way business is done in Texas, that's</p> <p>24 all.</p> <p>25 Q. What does that mean?</p>	<p>1 A. No.</p> <p>2 Q. How will that work?</p> <p>3 A. They do their own production. They do their</p> <p>4 own purchasing. I have nothing to do with it.</p> <p>5 Q. Okay. So the bottler will work with the</p> <p>6 distiller?</p> <p>7 A. Correct.</p> <p>8 Q. Do you know, does the bottler purchase the</p> <p>9 Tequila from the distiller?</p> <p>10 A. I'm sure he has to, ma'am.</p> <p>11 Q. Okay. So he purchases it from the distiller,</p> <p>12 he bottles it, and then does he then sell it to you?</p> <p>13 A. No.</p> <p>14 Q. Okay. Who would he sell it to, then?</p> <p>15 A. A to Z.</p> <p>16 Q. So A to Z would then get, I assume, boxes of</p> <p>17 bottles of this?</p> <p>18 A. I'm sure.</p> <p>19 Q. Okay. So at what point will you own the</p> <p>20 bottles?</p> <p>21 A. I will not own any part of it.</p> <p>22 Q. Okay. All right. So how are you going to get</p> <p>23 paid?</p> <p>24 A. We're going to be paid a royalty for everything</p> <p>25 forward.</p>
Page 38	Page 40
<p>1 A. The ow-premise business, the club business,</p> <p>2 restaurant.</p> <p>3 Q. Okay. So by ow-premise business, do you mean</p> <p>4 bars, restaurants?</p> <p>5 A. Bars and restaurants, yes.</p> <p>6 Q. So, for example, this could be mixed in</p> <p>7 margaritas?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. Do you have plans for how much of this</p> <p>10 is going to be sold for on-premise use and how much is</p> <p>11 going to be sold through retail liquor stores?</p> <p>12 A. That, I could not tell you.</p> <p>13 Q. Do you know if Amar has plans for that?</p> <p>14 A. I do not know his plans.</p> <p>15 Q. Okay. Let's go back again to this chain of --</p> <p>16 from production through distribution. Will you</p> <p>17 purchase -- is the plan for you to purchase the distilled</p> <p>18 Tequila from the distiller and then do you trans- --</p> <p>19 would you be transporting it to the bottler?</p> <p>20 A. I do not have any plans to bottle.</p> <p>21 Q. Okay. So do you -- for example, will you own</p> <p>22 the Tequila, gallons of it, or however it's -- it's put</p> <p>23 before it gets into the bottles? Will you buy it from</p> <p>24 them, and then you will take it to the bottler, or you</p> <p>25 will pay someone to do that?</p>	<p>1 Q. Okay. So will you be licensing the trademark</p> <p>2 to A to Z?</p> <p>3 A. No license of any kind, just a contract.</p> <p>4 Q. And do you have that contract done with A to Z?</p> <p>5 A. No.</p> <p>6 Q. And when you say "no license," what will be</p> <p>7 included in that contract with A to Z?</p> <p>8 A. Just a contract to be able to distribute it.</p> <p>9 Q. So do you anticipate that A to Z will be paying</p> <p>10 the bottler to receive the goods?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then after -- will A to Z apply the</p> <p>13 labels or will the bottler apply the labels?</p> <p>14 A. Bottler does everything.</p> <p>15 Q. Okay. Do they package it, then, into boxes; is</p> <p>16 that how it's shipped?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And are those packaged in Mexico, in the</p> <p>19 boxes?</p> <p>20 A. No.</p> <p>21 Q. Okay. When does that happen or where does that</p> <p>22 happen?</p> <p>23 A. At the bottler.</p> <p>24 Q. Okay. And that's right, because your bottler</p> <p>25 is going to be here in San Antonio.</p>

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<p>1 A. (Witness nods affirmatively.)</p> <p>2 Q. Okay. Does the Tequila come in big barrels?</p> <p>3 How does it show up at the bottler?</p> <p>4 A. I do not know.</p> <p>5 Q. Okay. Do you have a proposed contract from A</p> <p>6 to Z yet?</p> <p>7 A. No.</p> <p>8 Q. So the work you're doing with A to Z right now,</p> <p>9 is that just based on oral agreements?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Have you talked about the percentage</p> <p>12 royalty that you will get paid?</p> <p>13 A. No.</p> <p>14 Q. Have you thought about the percentage you would</p> <p>15 like to get?</p> <p>16 A. I would like to get all of it, but, no, ma'am,</p> <p>17 I have not put any thought into it.</p> <p>18 Q. Okay. Do you know what's typical for this type</p> <p>19 of arrangement?</p> <p>20 A. No.</p> <p>21 Q. When do you anticipate executing that sales</p> <p>22 contract?</p> <p>23 A. May.</p> <p>24 Q. And has Amar told you that he'll propose it to</p> <p>25 you, he'll give it to you, or are you going to write it</p>	<p>1 you know, business --</p> <p>2 Q. Okay.</p> <p>3 A. -- at all.</p> <p>4 Q. Okay. Do you know what percentage of their</p> <p>5 sales of Tequila go to package liquor stores and what</p> <p>6 percentage goes to restaurants?</p> <p>7 A. No, I don't.</p> <p>8 Q. Okay. I think I already asked this, but I'm</p> <p>9 going to ask again: Do you know if they have any written</p> <p>10 plans for their distribution of Mezquila?</p> <p>11 A. I do not know, ma'am.</p> <p>12 Q. And you don't know if they have any written</p> <p>13 plans for marketing or advertising?</p> <p>14 A. I do not know.</p> <p>15 Q. Okay. Let's take a look at what we'll label</p> <p>16 Exhibit 3.</p> <p>17 (Exhibit Number 3 marked)</p> <p>18 Q. Do you recognize Exhibit 3? Do you recognize</p> <p>19 this document?</p> <p>20 A. Yes, ma'am.</p> <p>21 Q. Okay. And what is it?</p> <p>22 A. It's a flight -- flight document to</p> <p>23 Guadalajara.</p> <p>24 Q. And when did you take this trip that is being</p> <p>25 discussed in this document? I guess I should back up.</p>
Page 42	Page 44
<p>1 and give it to him?</p> <p>2 A. We do not know yet.</p> <p>3 Q. We talked a little bit about the plan to -- for</p> <p>4 A to Z to distribute here in Texas first. Is your plan</p> <p>5 to distribute to specific types of retail packaged stores</p> <p>6 and restaurants or any that will buy?</p> <p>7 A. I do not know his plans.</p> <p>8 Q. Okay. Okay. I think I saw somewhere in the</p> <p>9 documents that you're aiming toward a relatively low</p> <p>10 Texas price point on this; is that correct?</p> <p>11 A. Repeat again.</p> <p>12 Q. That you're aiming for a relatively low Texas</p> <p>13 price point on this product; is that correct?</p> <p>14 A. It will be low price, yes.</p> <p>15 Q. Okay. So approximately how much?</p> <p>16 A. Take a break?</p> <p>17 Q. Absolutely.</p> <p>18 MR. PAUL: Go off the record.</p> <p>19 (Recess from 9:39 a.m. to 9:43 a.m.)</p> <p>20 Q. (By Ms. Meyer) Before we took a break,</p> <p>21 Mr. Gabriel, we were talking about how we previously</p> <p>22 spoke about A to Z marketing the Mezquila product in</p> <p>23 Texas and how -- and I was asking if you know the plan</p> <p>24 for where they would try to market this.</p> <p>25 A. No, ma'am, I don't know anything of A to Z's,</p>	<p>1 Did you take the trip that was discussed in this</p> <p>2 document? Did you take this trip?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And who went on this trip?</p> <p>5 A. Rosalie and Chuck Parish.</p> <p>6 Q. Okay. Who is Chuck Parish?</p> <p>7 A. He's our wholesale representative taking care</p> <p>8 of all the on-premise accounts.</p> <p>9 Q. And he's the wholesale representative for SA</p> <p>10 Discount Liquor?</p> <p>11 A. Well -- or Gabriel Investment Group.</p> <p>12 Q. Okay. And what do you mean by he's a wholesale</p> <p>13 representative?</p> <p>14 A. He takes care of the accounts.</p> <p>15 Q. So he -- he takes care of the -- the folks that</p> <p>16 are trying to sell liquor for you to retail?</p> <p>17 A. No, ma'am.</p> <p>18 Q. He handles those accounts?</p> <p>19 A. No, ma'am, on-premise. On-premise is clubs and</p> <p>20 restaurants.</p> <p>21 Q. Oh, okay. Okay. So he sells -- he sells</p> <p>22 products to clubs and restaurants?</p> <p>23 A. Yes.</p> <p>24 Q. Got it. And why did he go on this trip?</p> <p>25 A. I wanted him to be able to meet with the</p>

Page 93	Page 95
<p>1 Agavequila?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So do you have any plans for production</p> <p>4 of the Mixquila?</p> <p>5 A. At this point, no.</p> <p>6 Q. Okay. And have you met with distillers or</p> <p>7 bottlers?</p> <p>8 A. No.</p> <p>9 Q. Okay. At the time you filed these three</p> <p>10 applications, was it your intent that these would be</p> <p>11 products sold together?</p> <p>12 A. Could be.</p> <p>13 Q. And was it your intention that they would be</p> <p>14 marketed together?</p> <p>15 A. Do not know.</p> <p>16 Q. Why did you file three applications so closely</p> <p>17 together?</p> <p>18 A. Just for protection of name.</p> <p>19 Q. Who came up with the Agavequila name?</p> <p>20 A. I did.</p> <p>21 Q. And who came up with the Mixquila name?</p> <p>22 A. I did.</p> <p>23 Q. All three seem to have a similarity, being the</p> <p>24 "quila" ending. Were all three intended to be Tequila</p> <p>25 products?</p>	<p>1 Q. Okay. And that's a Mexican law?</p> <p>2 A. It's a Mexican law, plus it's recognized by the</p> <p>3 whole world. How that works, I don't know.</p> <p>4 Q. Okay. How does Mezcal work? Is that also an</p> <p>5 agave-based liquor?</p> <p>6 A. Agave-based, and Mezcal has to be made in the</p> <p>7 State of Oaxaca.</p> <p>8 Q. Okay. But they're two separate types of</p> <p>9 liquor; is that correct?</p> <p>10 A. Yes, they're all the same, agave-based.</p> <p>11 Q. Okay. Now, for the Tequila that you're</p> <p>12 planning to make or the agave-based spirits that you're</p> <p>13 planning on making, you're planning on those being</p> <p>14 Tequila, not Mezcal; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And because you're labeling them "Tequila," can</p> <p>17 that extra 49 percent also include Mezcal?</p> <p>18 A. No, ma'am. You're confusing things. Mezquila</p> <p>19 is just a brand name. It has nothing to do with any</p> <p>20 different type of liquor as the Tequila. Tequila is it.</p> <p>21 Q. Okay.</p> <p>22 A. It's just a brand name, is what I don't</p> <p>23 understand, so...</p> <p>24 Q. What do you mean by "just a brand name"?</p> <p>25 A. Yeah, just like I want to put your name on it,</p>
Page 94	Page 96
<p>1 A. Correct.</p> <p>2 Q. Was there an intention that any of them be</p> <p>3 different from the other?</p> <p>4 A. No.</p> <p>5 Q. And do you have any documents before</p> <p>6 February 6th, 2015, showing plans for using Mixquila?</p> <p>7 A. No.</p> <p>8 MS. MEYER: Why don't we take a break?</p> <p>9 (Recess from 11:03 a.m. to 11:11 a.m.)</p> <p>10 Q. (By Ms. Meyer) Mr. Gabriel, I only have a few</p> <p>11 more questions for you. Just to clarify, the agreements</p> <p>12 that you have with your -- the distiller, the bottler and</p> <p>13 the distributor, you don't have written agreements yet</p> <p>14 with them.</p> <p>15 A. I do not --</p> <p>16 Q. Is that correct?</p> <p>17 A. -- have any written agreement at this point.</p> <p>18 Q. With any of those three, do you have an oral</p> <p>19 agreement with them that you would consider a contract?</p> <p>20 A. No.</p> <p>21 Q. Okay. Are there any other agave-based liquors</p> <p>22 that aren't Tequila? I'm a little unclear about how that</p> <p>23 works with what's called Tequila and what's not.</p> <p>24 A. Tequila, by law, has to be made in the State of</p> <p>25 Jalisco, Mexico.</p>	<p>1 I want to put Rosalie's name on the Tequila, I want to</p> <p>2 put my son's name. It's any name that you come up with</p> <p>3 that you trademark and you use it to sell an item.</p> <p>4 That's why we have Cuervo, that's why we have Don Ramon,</p> <p>5 that's why we have Don Julio, and so forth, and so forth,</p> <p>6 and so forth. It's just a brand name that you just</p> <p>7 trademark and use.</p> <p>8 MS. MEYER: Well, I think I'm done. Do</p> <p>9 you have any questions for the witness?</p> <p>10 MR. PAUL: I do.</p> <p>11 THE WITNESS: You have questions for me?</p> <p>12 MR. PAUL: I do. Just a couple.</p> <p>13 EXAMINATION</p> <p>14 BY MR. PAUL:</p> <p>15 Q. Do you know whether they grow agave in South</p> <p>16 America?</p> <p>17 A. They grow agave all over the world. Africa --</p> <p>18 even Africa.</p> <p>19 Q. Could you make a distilled drink that used</p> <p>20 agave that was sourced from South America?</p> <p>21 A. If the agave plant is grown there, you can make</p> <p>22 any, you know, alcoholic drink out of the agave.</p> <p>23 Q. And you could use agave that was grown in</p> <p>24 Africa, as well?</p> <p>25 A. It has been used to make -- distill agave, yes.</p>

Page 97		Page 99	
1	Q. Have you ever thought about using agave from	1	IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2	South America as a potential option in your business?	2	TRADEMARK TRIAL AND APPEAL BOARD
3	A. Not at this point, but it's possible.	3	MAS CANTINAS, LLC, a)
4	MR. PAUL: Okay. I don't have any other	4	California Limited)
5	questions.	5	Liability Company,)
6	THE WITNESS: That was short, Mike.	6	Opposer,)
7	MS. MEYER: All right. Well --	7	vs.) Opposition No. 91223574
8	MR. PAUL: I'm to the point.	8	ROSALIE GABRIEL, an)
9	MS. MEYER: -- we can go off the record.	9	individual citizen of the)
10	(WITNESS EXCUSED)	10	United States, and JOHNNY)
11		11	D. GABRIEL, an individual)
12		12	citizen of the United)
13		13	States,)
14		14	Applicant.)
15		15	
16		16	REPORTER'S CERTIFICATION
17		17	ORAL DEPOSITION OF JOHNNY GABRIEL
18		18	March 3, 2016
19		19	I, TINA C. FULLER, Certified Shorthand Reporter
20		20	in and for the State of Texas, hereby certify to the
21		21	following:
22		22	That the witness, JOHNNY GABRIEL, was duly
23		23	sworn by the officer and that the transcript of the oral
24		24	deposition is a true record of the testimony given by the
25		25	witness
			I further certify that pursuant to FRCP Rule
			30(f) (1) that the signature of the deponent:
			___X___ was requested by the deponent or a party
Page 98		Page 100	
1	CHANGES AND SIGNATURE	1	before the completion of the deposition and returned
2	WITNESS NAME: JOHNNY GABRIEL	2	within 30 days from date of receipt of the transcript.
3	DEPOSITION DATE: March 3, 2016	3	If returned, the attached Changes and Signature Page
4	PAGE LINE CHANGE OR CORRECTION REASON FOR CHANGE	4	contains any changes and the reasons therefor;
5	_____	5	_____ was not requested by the deponent or a
6	_____	6	party before the completion of the deposition.
7	_____	7	I further certify that I am neither attorney
8	_____	8	nor counsel for, related to, nor employed by any of the
9	_____	9	parties to the action in which this testimony was taken.
10	_____	10	Further, I am not a relative or employee of any attorney
11	_____	11	of record in this cause, nor am I financially or
12	_____	12	otherwise interested in the outcome of the action.
13	_____	13	Certified to by me on this 14th day of March, 2016.
14	_____	14	
15	_____	15	
16	_____	16	Tina C. Fuller, CSR
17	_____	17	Texas CSR 3633
18	_____	18	Expiration: 12/31/2016
19	I, JOHNNY GABRIEL, have read the foregoing	19	DepoTexas Firm Registration No. 539
20	deposition and hereby affix my signature that the same is	20	100 N.E. Loop 410, Suite 540
21	true and correct, except as noted above.	21	San Antonio, Texas 78216
22		22	210-481-7575
23		23	
24	JOHNNY GABRIEL	24	
25		25	

Exhibit 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Application)	
Serial No. 86518323)	
Filed: January 29, 2015)	
Published: June 23, 2015)	
By: Rosalie Gabriel, Individual, and Johnny D. Gabriel,)	
Individual)	
For the Trademark: MEZQUILA)	Opposition No. 91223574
<hr style="border: 1px solid black;"/>)	
MAS CANTINAS LLC, a California Limited Liability)	
Company, and LOS SANTOS, LLC, a California Limited)	
Liability Company)	
)	
v.)	
)	
)	
ROSALIE GABRIEL, an individual citizen of the United)	
States, and JOHNNY D. GABRIEL, and individual citizen of)	
the United States)	
)	
Applicant.)	
<hr style="border: 1px solid black;"/>		

[PROPOSED] AMENDED NOTICE OF OPPOSITION

Opposers, Mas Cantinas LLC (“Mas Cantinas”), a California limited liability company, having an address of P.O. Box 5395, Novato, California, 94948, and Los Santos, LLC (“Los Santos”), a California limited liability company, having an address of 147 Del Oro Lagoon, Novato, California, 94909, (collectively “Opposer”) believes that it will be damaged by registration of the mark MEZQUILA shown in Rosalie Gabriel and Johnny D. Gabriel’s (collectively, “Applicant”) Application Serial No. 86/518,323, as published in the Official Gazette on June 23, 2015, and hereby opposes the same.

As grounds for the Opposition, Opposer alleged that:

Applicant's Mark

1. On January 29, 2015, Applicant filed Application Serial No. 86/518,323, for MEZQUILA, ("Applicant's Mark") for alcoholic beverages except beers.
2. Applicant admits that "Mezcal" is the term to describe a well-known type of an agave-based alcoholic beverage that originates in the Mexican State of Oaxaca.
3. Applicant admits that "Tequila" is the term to describe a well-known type of an agave-based alcoholic beverage that originates in Jalisco, Mexico.
4. On information and belief, Applicant's Mark is a telescoped form of MEZCAL and TEQUILA.

Opposer's Marks

5. Opposer Mas Cantinas filed an application for SANTO MEZQUILA, Serial No. 86/609,601, on or around April 24, 2015, for alcoholic beverages, except beer, namely, a beverage which includes Mezcal and Tequila.
6. Opposer Mas Cantinas also filed an application for SANTO ESPIRITU MEZQUILA, Serial No. 86/609,616, on or around April 24, 2015, for alcoholic beverages, except beer, namely, a beverage which includes Mezcal and Tequila.
7. Together, the SANTO MEZQUILA and SANTO ESPIRITU MEZQUILA marks are "Opposer's Marks."

PTO Office Action

8. On August 4, 2015, Opposer received Office Action from the United States Patent and Trademark Office ("PTO") stating that Opposer's Applications may be barred by an already pending application, Serial No. 86/518,323.
9. Application Serial No. 86/518,323 is the subject of this Notice of Opposition.

10. In the August 4, 2015, Office Action, the Examining Attorney stated that after receipt of a response to the office action, the applications may be suspended pending final disposition of the earlier-filed, referenced application, Serial No. 86/518,323.

11. On September 28, 2016, a Letter of Suspension was issued, indicating that Serial No. 86/609,616 had been suspended.

12. On February 2, 2016, however, a Notice of Allowance was issued for Serial No. 86/609,601.

Applicant Has No Bona Fide Intent to Use

13. Applicant has admitted that it first thought of MEZQUILA in 2004.

14. Applicant has admitted that, at the time of filing the present application, Serial No. 86/518,323, it had no plans to use the mark in connection with the claimed goods.

15. Applicant has admitted that, at the time of filing the present application, Serial No. 86/518,323, it did not sell any of the claimed goods, and did not otherwise use the mark in commerce.

16. Applicant has admitted that it filed the present application, Serial No. 86/518,323, because “it would be a good idea to have it trademarked as a brand name in case [he] wanted to bring in [his] own tequila.”

17. Applicant has admitted that it does not have a written business plan for the present use of Applicant’s Mark in connection with the claimed goods.

18. Applicant has admitted that it does not have a written business plan for the future use of Applicant’s Mark in connection with the claimed goods.

19. Applicant has admitted that it currently has no contracts in place for the present use of Applicant’s Mark in connection with the production or distribution of the claimed goods.

20. Applicant has admitted that it currently has no contracts in place for the future use of Applicant's Mark in connection with the production or distribution of the claimed goods.

21. Applicant's Mark should therefore not be registered because Applicant did not, and does not, have the requisite bona fide intent to use the mark in connection with the claimed goods.

Opposer Has Bona Fide Intent to Use

22. Opposer has a bona fide intent to use Opposer's Marks to designate alcoholic beverages, spirits, liqueurs, mezcals, and tequilas in the United States, and throughout the world.

Applicant's Mark is Geographically Deceptively Misdescriptive

23. Applicant has admitted that "mezcal" is the term to describe a well-known type of an agave-based alcoholic beverage that originates in the Mexican State of Oaxaca.

24. Applicant has admitted that "tequila" is the term to describe a well-known type of an agave-based alcoholic beverage that originates in Jalisco, Mexico.

25. On information and belief, Applicant's Mark is a telescoped form of the dominant portions of MEZCAL and TEQUILA, two well-known generic terms for agave-based alcoholic beverages.

26. Applicant has admitted that it travelled to Mexico two times in efforts to find a supplier of agave-based alcoholic beverages.

27. Applicant has admitted that it seeks to use Applicant's Mark in connection with the sale of agave-based alcoholic beverages that originate in Mexico.

28. Applicant's Mark is claimed for "alcoholic beverages except beers."

29. Applicant's Mark should therefore not be registered as it is geographically descriptive for "alcoholic beverages except beers" that contain mezcal and tequila that originate

in Mexico as it is merely a telescoping of dominant portions of those well-known generic terms for agave-based alcoholic beverages.

Applicant's Mark is Deceptively Misdescriptive

30. Applicant has admitted that “mezcal” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in the Mexican State of Oaxaca.

31. Applicant has admitted that “tequila” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in Jalisco, Mexico.

32. On information and belief, Applicant's Mark is a telescoped form of the dominant portions of MEZCAL and TEQUILA, two well-known generic terms for agave-based alcoholic beverages.

33. Applicant's Mark is claimed for “alcoholic beverages except beers.”

34. Applicant has admitted that it seeks to use Applicant's Mark in connection with the sale of agave-based alcoholic beverages that originate in Mexico.

35. Applicant has admitted that it may not use the mezcal-type of agave-based alcoholic beverage in its agave-based alcoholic beverages that originate in Mexico.

36. Applicant's Mark should therefore not be registered as it would be deceptively misdescriptive for “alcoholic beverages except beers” as it is merely a telescoping of dominant portions of well-known generic terms for agave-based alcoholic beverages, but will be used in connection with goods that do not, in fact, contain mezcal.

Applicant's Mark is Generic

37. Applicant has admitted that “mezcal” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in the Mexican State of Oaxaca.

38. Applicant has admitted that “tequila” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in Jalisco, Mexico.

39. On information and belief, Applicant’s Mark is a telescoped form of the dominant portions of MEZCAL and TEQUILA, two well-known generic terms for agave-based alcoholic beverages.

40. Applicant’s Mark is claimed for “alcoholic beverages except beers.”

41. Applicant’s Mark should therefore not be registered as it is generic for “alcoholic beverages except beers” that contain mezcal and tequila as it is merely a telescoping of dominant portions of well-known generic terms for agave-based alcoholic beverages.

Applicant’s Mark is Merely Descriptive Without Acquired Distinctiveness

42. Applicant has admitted that “mezcal” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in the Mexican State of Oaxaca.

43. Applicant has admitted that “tequila” is the term to describe a well-known type of an agave-based alcoholic beverage that originates in Jalisco, Mexico.

44. On information and belief, Applicant’s Mark is a telescoped form of the dominant portions of MEZCAL and TEQUILA, two well-known generic terms for agave-based alcoholic beverages.

45. Applicant’s Mark is claimed for “alcoholic beverages except beers.”

46. Applicant has admitted it does not currently use Applicant’s Mark in commerce in connection with the claimed goods.

47. The present application, Serial No. 86/518,323, is an intent-to-use application.

48. Upon information and belief, Applicant’s Mark has not acquired distinctiveness, given that it has never been used in commerce with the claimed goods.

49. Applicant's Mark should therefore not be registered as it is merely descriptive and has not acquired distinctiveness for "alcoholic beverages except beers."

Registration of Applicant's Mark Will Harm Opposer

50. Registration of Applicant's Mark will provide statutory presumptions inconsistent with the rights of Opposer to use and register Opposer's Mark in the United States, thus damaging Opposer.

51. The services purported to be provided by Applicant are identical and/or highly related to those provided by Opposer, specifically, alcoholic beverages, and thus Opposer has sufficient interest in preventing registration of Applicant's Mark, which is without inherent or acquired distinctiveness.

WHEREFORE, Opposer prays that Application Serial No. 86/518,323 be refused and denied registration as Opposer believes and avers that it will be damaged by the registration of Serial No. 86/518,323 filed January 29, 2015, as aforesaid and requests that Applicant be required to answer the allegations of this Notice of Opposition and that the opposition to the said application be sustained.

This Notice of Opposition is being submitted electronically. The required fee is authorized to be charged against the Deposit Account No. 501990 of the Attorney for Opposer.

DATE: April 20, 2016

Respectfully submitted,

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